SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 70

IRA TAYLOR

v.

THE STATE OF GEORGIA

Appeal from The Supreme Court of the State of Georgia.

BRIEF FOR THE APPELLEE

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INDEX

Cases Cited

Page

STATUTES

CONSTITUTIONAL CITATIONS

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This is an appeal from a judgment of the Supreme Court of Georgia affirming the conviction of Appellant as a common cheat and swindler by the Superior Court of Wilkinson County, Georgia.

Opinions Below

No opinion was written by the trial court.

The opinion of the Supreme Court of Georgia (R. 39-42) is reported in 191 Ga. 682.

Jurisdiction

It is admitted that the Supreme Court of the United States has jurisdiction.

Question Involved

Whether the Act of August 15, 1903 (Ga. Laws 1903, page 90, Section 26-7408 and 26-7409, Code of 1933: Penal Code, Sections 715 and 716), enacted by the Georgia Legislature, violates the 13th and 14th Amendments to the Constitution of the United States and the provisions of the Federal Peonage Statute, being the Act of Congress of March 2, 1867, Chapter 187, Section 1, 14 Stat. at L. p. 546, found in R. S. Sec. 1990 and Sec. 5526 (U. S. C. Title 8, Sec. 56 and U. S. C. Title 18, Sec. 444).

Statutes Involved

The Statutes involved are correctly set out in Appellant's brief. (Pages 2, 3, and 4.)

Statement

The statement of Appellant is substantially correct and it is desired to add nothing to it.

Summary of Argument

1. The Georgia Statute herein assailed is not violative of the 13th Amendment to the Constitution of the United States and of the Act of Congress forbidding peonage, because the fundamental purpose of the statute as construed by the Supreme Court of Georgia and the Court of Appeals of Georgia is not to punish for failure to perform services or pay debts, but to punish for fraudulently procuring money or other thing of value. The construction of a State statute is a matter for the State Courts and the Federal Courts would accept the construction so made by the State Courts. The second section

of the Georgia statute herein assailed is separate and distinct from the first section. The first section deals with a substantive offense, the second deals with a rule of evidence in proving the commission of the offense. The holding of one to be invalid will not necessarily result in declaring the other invalid. The State has the power to create rules of evidence creating a presumption if such presumption is rational. The second section of the Georgia statute in question creates a rule of evidence and a presumption which is rational. The second section of the Georgia statute in question as construed by the State Courts does not deprive a defendant of any of the rights guaranteed him by the 13th Amendment, nor is it violative of the provisions of the law forbidding peonage, but on the contrary it places the burden on the State of Georgia to prove all of the elements of an ordinary cheating and swindling case, and in addition to prove all of the things set out in said section.

2. The Georgia statute is not violative of the Due Process Clause of the 14th Amendment, in that the presumption of fraudulent intent created by the statute is unreasonable and arbitrary. Failure to perform the service or to return the money without good and sufficient cause does create a presumption of fraudulent intent in the mind of a reasonable man. The defendant cannot be harmed by this rule of evidence established by the statute of Georgia because the burden is on the State to prove that his failure was without good and sufficient cause. If the State proves all this, the defendant is only presumptively guilty of having the intent to defraud when he obtained the advancement. Under the Georgia law he can repel this presumption by putting up evidence or by making his own statement not under oath. This statement shall have such force as the jury may think right to give it and they may believe it in preference to the testimony of the case. The Georgia Courts have construed the two sections of this statute to

mean that the State must prove the contract, the procurement on same of money or other thing of value, the failure to perform the services or failure to return the money, without good and sufficient cause and loss and damage to the hirer, all of these things, and in addition thereto the State must prove that the accused had an intent to defraud at the time he obtained the advancement.

3. The Georgia Statute is not violative of the Due Process Clause of the 14th Amendment to the Federal Constitution, in that it is too vague and indefinite and uncertain to provide a sufficiently ascertainable standard of guilt because the statute fails to define what is meant by "good and sufficient cause." Under the construction of the State Courts and by logic and reason if the defendant had the intent to perform the contract, or to pay back the money in case he did not perform it, at the time he procured the advancement, he could never be convicted even though his good intent may have been changed by some cause however trivial, one minute after he procured the advancement. Therefore, *any* cause which caused a change in the intent of the defendant from good to evil would be a good and sufficient cause. If there was a change in the defendant's intent any cause producing this change would of necessity be a good and sufficient cause.

4. The Georgia statute is not repugnant to the Equal Protection Clause of the 14th Amendment because it creates an unlawful discrimination against the laboring class and confers a special privilege of immunity on all other persons.

ARGUMENT

As the first three paragraphs covered in my summary of argument cover practically the same questions they will be argued together.

I, II and III.

It will be admitted that slavery and peonage once existed in Georgia, but it is denied that it now exists in any form or phase which is countenanced by the statutes of Georgia or its Courts. There are and always have been criminals in every state of the Union who are willing not only to cause involuntary servitude but are willing to commit murder for money. But the State of Georgia through its laws and its Courts jealously defends the constitutional rights to liberty and due process of the law of all of its citizens.

Nor is the Georgia statute in question invoked to any appreciable extent by any of the citizens of Georgia. This act was passed on August 15, 1903. There are approximately three and one-half million people in the State of Georgia. The Act has been in force nearly forty years and in all that time there have been only about one hundred cases arising under this Act to reach the Appellate Courts of Georgia. In the last fifteen years there have been approximately ten cases to reach the Appellate Courts of Georgia. Out of the approximate one hundred appealed about fixe have been affirmed and the rest reversed. Where the cases were carried up on the sufficiency of the evidence, approximately eight of the cases have been affirmed when they were carried up on constitutional grounds only. Therefore, it can be safely said that the Appellate Courts have construed this statute so strictly that the constitutional rights of its citizens are well guarded and guaranteed by the State of Georgia. As to the number of cases under this statute actually being tried in the

trial courts, it is safe to say that the number is negligible because where the Appellate Courts are reversing ninety-five out of one hundred, practically all convicted would be appealed. So even if we presume that this statute is conducive of peonage, imprisonment for debt, and involuntary servitude it is manifestly evident that very few wicked people in Georgia are taking advantage of it when it appears that during the last fifteen years in a state of three and one-half million population only ten of such cases have reached the Appellate Courts of Georgia.

It is said that the statute of Georgia in question violates the 13th Amendment which prohibits slavery or involuntary servitude, except as punishment for crime, and that it also violates the Act of Congress forbidding peonage.

It is a well settled proposition that any State may pass a law punishing as a crime any person found guilty of obtaining money or other thing of value by false promises or false representations with intent to defraud.

The construction of a State statute is a matter for the State Courts, and the Federal Courts will accept the construction so made by the State Courts.

Cargill v. Minnesota, 180 U. S. 452 (21 Sup. Ct. 423, 45 L. Ed. 619).

The Georgia Courts have always held that the gravamen of the offense charged under the statute in question is the fraud perpetrated, and these sections have for their purpose solely the punishment of fraud, and not the creation of a remedy for the collection of debts or the compelling of the performance of contracts.

In

Bullard v. The State, 60 Ga. App. 33, 34, and 35,

one of the last cases under this statute to go to the Appellate

Courts of Georgia, I quote the fourth paragraph of the decision:

> "The constitution of Georgia (Code, Section 2-121), provides that 'There shall be no imprisonment for debt.' The gravamen of the offense chargeable under the Code, Sections 26-7408, 26-7409, is the fraud perpetrated, and these sections have for their 'purpose solely the punishment of fraud, and not the creation of a remedy for the collection of debts or the compelling of the performance of contracts.' *Mulkey v. State*, 1 Ga. App. 521, 523 (57 S. E. 1022). We quote from *Wilson v. State*, 138 Ga. 489, 491: 'This court has several times construed Section 715 (Sections 26-7408, 26-7409). It has uniformly been held that the offense therein declared was not for failure to perform service or pay debts, but was for fraudulently procuring money or other thing of value; that the fraudulent conduct of the defendant was the gist of the crime, not merely his failure to perform his contract.' *Lamar v. State*, 120 Ga. 312 (47 S. E. 958); *Lamar v. Prosser*, 121 Ga. 153 (7), 154 (48 S. E. 977); *Vinson v. State*, 124 Ga. 19 (2), 21 (52 S. E. 79); *Townsend v. State*, 124 Ga. 69 (52 S. E. 293); *Banks v. State*, 124 Ga. 15 (4), 17 (52 S. E. 74, 2 L.R.A. (N.S.) 1007); *Sterling v. State*, 126 Ga. 92 (54 S.E. 921); *Vance v. State*, 128 Ga. 661 (57 S.E. 889); *Dyas v. State*, 126 Ga. 556 (55 S. E. 448); *Latson v. Wells*, 136 Ga. 681 (71 S. E. 1052). The court erred in overruling the demurrers to the indictment, and the motion for a new trial. Judgment reversed."

As to the second part of the Act of Georgia assailed, which is codified as Section 716 of the Penal Code, there is a rule of evidence in proving the commission of the offense set out in the preceding section. It is a well settled rule of constitutional law that if two parts of an act, or two laws or sections of the Code in regard to the some subject matter, are severable in character, so that one may exist and carry out the legislative intent independently of the other, the holding of one to be

invalid will not necessarily result in declaring the other invalid. Section 716 of the Penal Code provides that satisfactory proof of the contract, the procuring thereon of money or the thing of value, the failure to perform the service so contracted for, or the failure to return the money so advanced with interest thereon at the time the labor was to be performed, without good and sufficient cause, and loss or damage to the hirer shall be deemed presumptive evidence of the intent referred to in the preceding section. Appellant contends that this section especially offends because it creates a presumption that is unreasonable which deprives a defendant of due process of law because it presumes him to be guilty and exposes him to conviction for fraud upon evidence only of a breach of contract and a failure to pay.

> "Constitutional law—due process of law—presumption and burden of proof.
>
> A state may, consistently with the due-process-of-law clause of U. S. Const., 14th Amend., create by statute a rebuttable presumption of guilty knowledge by the actual occupant of a farm from a finding upon the premises of apparatus for distilling prohibited intoxicating liquors, although, under the local law, a defendant in a criminal case may not testify as a witness, and husband and wife are not competent or compellable to give evidence in any criminal proceeding for or against each other."

Hawes v. State of Georgia, 258 U. S. 1, 66 L. Ed. 431.

That the legislature may make one fact prima facie evidence of another is certainly within the established power of a State in prescribing the evidence which is to be received in the Courts of its own government.

Adams v. New York, 192 U. S. 585, 588, 58 L. Ed. 575, 578, 24 Sup. Ct. Rep. 372.

Hawkins v. Bleakly, 243 U. S. 210, 214, 61 L. Ed. 678, 683, 37 Sup. Ct. Rep. 255, Ann. Cas. 1917D, 637, 13 N.C.C.A. 959.

> "The establishment of presumptions, and of rules respecting the burden of proof, is clearly within the domain of the state governments, and that a provision of this character, not unreasonable in itself and not conclusive of the rights of the party, does not constitute a denial of due process of law. *Mobile, J. & K. C. R. Co. v. Turnipseed,* 219 U.S. 35, 42, 55 L. Ed. 78, 80, 32 L.R.A. (N.S.) 226, 31 Sup. Ct. Rep. 136, Ann. Cas. 1912A, 463, 2 N.C.C.A. 243.
>
> "Undoubtedly there must be a relation between the two facts. *Bailey v. Alabama,* 219 U. S. 219, 55 L. Ed. 191, 31 Sup. Ct. Rep. 145; *McFarland v. American Sugar Ref. Co.,* 241 U. S. 79, 60 L. Ed. 899, 36 Sup. Ct. Rep. 498. That is, if one may evidence the other, there must be connection between them—a requirement that reasoning insists on, and, necessarily, the law."

Appellant also says that Section 716 deprives defendant of due process of law because the words "good and sufficient cause" are too vague and indefinite to provide a sufficiently ascertainable standard of guilt. We do not think that Section 716 above set out creates a presumption so arbitrary and unreasonable as to constitute a denial of due process of law, nor that the words "good and sufficient cause" are vague and indefinite. The words "good and sufficient cause" must be construed as to their meaning in this particular statute. It is reasonable to presume that where one obtains something of value from another by promising to do something in return and then fails to carry out the contract without any cause whatever, that he meant to deceive and defraud when he made the promise and procured the thing of value. The biggest illustration that anyone knows anything about is the case of Hitler. He promised faithfully that if Czechoslovakia be given to him he would cease aggression, and immediately upon obtaining it he demanded Poland. A billion reasonable people immediately presumed with reason that he was lying when he made his first promise and procured Czechoslovakia. The

United States Government has presumed the same thing so strongly that when he says he has no designs on us, it is spending a hundred billion dollars to back up its presumption. But let us turn the cold light of reason and logic upon this section as it has been construed by the State Courts and see if it creates an unreasonable and arbitrary presumption and if the words "good and sufficient cause" are vague and indefinite. It will be presumed that a man intends the natural consequence of his acts. This is a well settled presumption of law. A condition once proved to exist will be presumed to continue to exist. This is a well settled presumption of law. Actions speak louder than words. This is an axiom or truism universally recognized. It can without doubt be conceded that if a person fails to perform the service contracted for or fails to return the money procured as an advancement, that no matter what his intent might have been when he procured the advancement, at the time of the failure his intent was to do what he did, that is, not to perform and not to return the money. Reasoning further: At the time he procured the advancement he had some kind of intent. Then it goes without question that he had the same intent when he procured the advancement as he wound up with when he failed to perform, *unless something happened to change the intent.* What could happen to change his intent from the time he got the advancement to the time he failed to perform or return the money? Broadly speaking, it could have been anything which affected him enough mentally, morally, or physically to change his mind or his intent. Of course, if he suffered physical injury he could not perform. Any cause which caused this change was a *good and sufficient cause* under the law as construed by the Georgia Courts because it would negative the intent to defraud and thus criminal responsibility. The burden is on the State then to prove that nothing happened that would affect the defendant enough mentally, physically or morally to make his intent, or we may say prop-

erly, his mind, to change. If at the time he got the advancement he had the intent to perform or pay back the money, he could not be found guilty, no matter if his intent was changed one minute later from *any* cause.

Any cause that would change the *defendant's* mind, not my mind, not your mind, but the *defendant's* mind, is a *good and sufficient cause.*

If his intent changed, there had to be a good and sufficient cause. The burden is on the State to prove that there was *no* good and sufficient cause. Therefore, the burden is on the State to prove that his mind or his intent did not change. It follows: That the burden is on the State to prove that when the defendant procured the advancement he had the same intent with which he wound up, i.e., not to perform and not to pay back the advancement.

And so we reach the inevitable conclusion that the State must prove by probative facts under the rules of evidence applicable to any other kind of case, that the defendant had the fraudulent intent not to perform the contract and not to pay the money back when he procured the advancement; and that proof of the contract, proof of the advancement, proof of failure to perform or pay the money back and proof of loss to the hirer does not, and cannot create a presumption of such fraudulent intent, *because* of the "good and sufficient cause" rule.

The Georgia Appellate Courts, although their decisions do not show that they arrived at this conclusion as it was arrived at above, have held and construed the law in the same manner.

Johnson v. The State, 7 Ga. App. 812.

> "To sustain a conviction of a violation of the 'labor-contract act' of 1903 (Acts 1903, p. 90), the evidence must show that there was a fraudulent intent at the time when the money or other thing of value was obtained

from the employer, *and* that the laborer failed to perform his contract or repay his advances, without good and sufficient cause. None of these facts were shown in this case. The evidence does not in any essential particular support the verdict."

In the case of

Thorn v. The State, 13 Ga. App. 10,

the Court holds as follows

"As has frequently been held by the Supreme Court, and as also held by this court, the burden is on the State to prove that the failure of the accused to perform the service contracted for, or to return the money, was without good and sufficient cause. *Brown v. State,* 8 Ga. App. 212 (68 S.E. 865); *Mason v. Terrell,* 3 Ga. App. 348-9 (60 S.E. 4). The failure to perform the services or return the money is presumptive evidence of an undisclosed intent to defraud only when it appears that there was no good and sufficient cause why the contract was not performed. Hence, to complete its presumptive case, the State must show that there was no good reason why the contract was not performed, or, in default thereof, that there was no good reason why the accused did not return the money advanced to him. Without this proof the State's case is incomplete because the prosecution has not created the evidentiary presumption necessary to rebut the presumption of innocence. Presumably the accused had good and sufficient cause. It is only after the State has made it appear that there was no sufficient cause or good reason why the accused did not perform his contract, or else return the money, that the State has made even a prima facie case."

One of the latest decisions of the Appellate Courts of Georgia showing how strictly construed this law is is found in

Banton v. The State, 57 Ga. App. 173, 174.

Justice Guerry wrote the opinion, which I set out below:

"The Code, Sections 26-7408, 26-7409, makes it a misdemeanor to fraudulently procure money on a contract

for services. The purpose of this law 'is not to enforce the contract to perform services, but to punish the fraudulent procurement of money, or other thing of value under the contract.' *Brown v. State*, 8 Ga. App. 211 (68 S.E. 865). 'Because of the nature of this law, and lest it be abused, the courts have been strict in requiring the State to allege and prove those things which, under the statute, are necessary for a conviction.' *Winters v. State*, 32 Ga. App. 56 (122 S. E. 635). To make a prima facie case the State must prove, among other things, a definite contract (*Sanders v. State*, 7 Ga. App. 46, 65 S. E. 1071; *Adams v. State*, 10 Ga. App. 801, 74 S. E. 95; *Starling v. State*, 5 Ga. App. 171 (4), 62 S. E. 993); that the defendant failed to perform the services so contracted for, without good and sufficient cause (*Simmons v. State*, 18 Ga. App. 65 (2), 66, 88 S. E. 800; *Ashley v. State*, 22 Ga. App. 626, 97 S. E. 82; *Crayton v. State*, 26 Ga. App. 426 (3), 106 S. E. 919; *Johnson v. State*, 125 Ga. 243 (3), 54 S. E. 184; *Hankinson v. State*, 6 Ga. App. 793, 65 S. E. 837; *Thorn v. State*, 13 Ga. App. 10 (2), 78 S. E. 853); and that he failed to return the money so advanced, with interest thereon at the time said labor was to be performed, without good and sufficient cause, and all to the loss and damage to the hirer. *Lewis v. State*, 15 Ga. App. 405 (3) (83 S.E. 439); *Abrams v. State*, 126 Ga. 591 (55 S.E. 497); *Coleman v. State*, 6 Ga. App. 398 (5) (65 S.E. 46); *Mobley v. State*, 13 Ga. App. 728 (79 S. E. 906). Mere proof that the defendant failed to carry out the contract does not give rise to a presumption that he did so without good and sufficient cause (*Thorne v. State*, supra; *Beeman v. State*, 17 Ga. App. 752, 88 S. E. 408, and cit.), nor is such essential element supplied by statements of the hirer that he knew of no good reason why the laborer did not comply with the contract. *King v. State*, 36 Ga. App. 272 (136 S.E. 466); *Wood v. State*, 39 Ga. App. 355 (147 S. E. 780); *Cofer v. State*, 34 Ga. App. 220 (129 S.E. 110); *Barlow v. State*, 42 Ga. 437 (156 S. E. 641)."

It would seem then that instead of depriving the accused of

any of his constitutional rights or rights under any statute of the United States, the Georgia statute assailed in this case allows him to be convicted, upon proper proof only, of obtaining something of value with a fraudulent intent at the time of obtaining it, and that this fraudulent intent can only be proved by extraneous evidence and cannot be inferred from his failure to perform the contract or return the money. In addition to this it furnishes him with four avenues of escape from the consequence of his crime not granted to defendants in other types of cheating and swindling cases, namely: (1) If the contract was not definite in every particular, he escapes. (2) If he repents and does the work promised, he escapes. (3) If he repents and pays back the money, he escapes. (4) If his criminal conduct fails to cause loss or damage to the hirer, he escapes.

The truth about the matter is it is practically impossible to convict under these two sections of the Code.

Ferguson v. The State, 18 Ga. App. 730.

"Broyles, J. The defendant was convicted of a violation of the 'labor-contract act' (Acts 1903, p. 90; Park's Penal Code, Sections 715, 716). In order to sustain the constitutionality of this act, our Supreme Court has considered it necessary to give to the act a very strict construction. This construction has of course been followed by this court, in reviewing cases based upon alleged violations of this act. Under such a strict construction it has been (as is shown by the large number of such cases in which there have been reversals by the Supreme Court and this court) a very difficult matter for a reviewing court to sustain convictions secured under this act; and this case is no stronger than the average one. The evidence adduced upon the trial was clearly insufficient to authorize the conviction of the accused. Judgment reversed."

The case relied on by counsel for Appellant is

Bailey v. Alabama, 219 U. S. 219, 236.

In

Wilson v. The State, 138 Ga. 489, 495,

Justice Atkinson wrote the opinion and we respectfully refer this Court to his opinion appearing on pages 491 through 495, wherein he distinguishes the Alabama statute in question from the Georgia statute in question holding that there are material differences both in the Alabama statute and in the defendant's right to make a statement and the weight and credit to be given this statement by the jury and in the Georgia rule of evidence from the Alabama rule of evidence.

IV.

This statute is not repugnant to the Equal Protection Clause of the 14th Amendment.

The statute applies equally to all races. In the nature of things the master does not ordinarily procure advances from his servant, or the employer from his employee. Legitimate classification is not unjust discrimination. There are a very large number of laws upon the statute books imposing penalties upon certain persons without also providing for penalties as to others, though having some relation with them. The abandonment of a child by its father is made a misdemeanor. Penal Code, Section 114. But it is not declared criminal for a child to abandon its father. It is evident that the same duty does not rest upon both, and the two are not in the same situation. Enticing away apprentices is unlawful. Penal Code, Section 119. But nothing is said as to putting any penalty on the employer. Wilfully or maliciously to burn, or to attempt to burn, any railroad bridge is declared to be arson, although other bridges are not mentioned. Penal Code, Section 145. Selling liquor without a license is made criminal

although no penalty is imposed by law upon the purchaser. Penal Code, Sections 431, 433. Any baker or other person selling bread under the size established by the corporation of any city, town, or village, or the rules laid down by law, shall be punished as for a misdemeanor, but no punishment is provided for the man who buys the undersized bread, the loss incurred falling on him. Penal Code, Section 661. It is criminal for bank officers to purchase any bill, check, or other evidence of debt issued by the bank, for less than its face value; but the seller is not punished. Penal Code, Section 209. These are only a few of the many instances which might be cited, but they will suffice to show that where two persons deal with each other and the conduct of one requires safeguarding, criminal laws have been shaped for that purpose; and they have never been considered unconstitutional.

But there is a provision of the law of Georgia under which the employer could be prosecuted if he used fraudulent promises and had the intent to defraud in obtaining the services of the employee. This provision of the Code of Georgia follows the statute assailed in this case and it is Section 719 of the Penal Code of Georgia and reads as follows:

> "Other offenses of like kind.—Any person using any deceitful means or artful practice, other than those which are mentioned in Part XII of this Title, by which an individual, or a firm, or a corporation, or the public is defrauded and cheated, shall be punished as for a misdemeanor."

Under this Code Section it has been held as follows:

Oliver v. The State, 15 Ga. App. 452.

> "Wade, J. I. When one, by using any deceitful means or artful practice other than those specifically mentioned in the Penal Code, obtains the money or goods of another, the offense defined in Section 719 of the Penal Code of 1910 is complete as soon as the owner of the

money or goods is thus deprived of his property. *Love v. State,* 111 Ga. 650 (36 S. E. 856). 'The offense of obtaining property by false pretenses is complete when the property is obtained.' 12 Am. & Eng. Enc. Law (2d ed.), 835 (7)."

So it plainly appears that should the employer obtain the services of a laborer with intent to defraud him of their value, he could be convicted under the Georgia law and even if he repented and later on paid him he could be punished because a crime was complete when he fraudulently obtained the services.

Conclusion

And so in conclusion, it has been plainly shown by the records and court decisions of the State of Georgia that she has as jealously guarded the liberties and constitutional rights guaranteed to her citizens by the Constitution of the United States and the Constitution of Georgia as does any state in the Union, yes, even as does the Supreme Court of the land.

Respectfully submitted,

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